

328.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

328.311-2 Agency solicitation provisions and contract clauses.

The Contracting Officer shall insert the clause in 352.228-7, Insurance—Liability to Third Persons, in lieu of the clause in FAR 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts when a cost-reimbursement contract is contemplated. The Contracting Officer shall insert Alternate I or II based on the conditions specified therein. This is an authorized FAR deviation.

PART 330—COST ACCOUNTING STANDARDS

Subpart 330.2—CAS Program Requirements

Sec.

330.201 Contract requirements.

330.201-5 Waiver.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 330.2—CAS Program Requirements

330.201 Contract requirements.

330.201-5 Waiver.

(a) OPDIVs shall forward waiver requests through appropriate acquisition channels, including the HCA, to the Associate DAS for Acquisition (non-delegable) for review. Associate DAS for Acquisition shall exercise the waiver authority under FAR 30.201-5(a)(2).

PART 331—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 331.1—Applicability

Sec.

331.101-70 Salary rate limitation.

331.102-70 Pricing of adjustments.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 331.1—Applicability

331.101-70 Salary rate limitation.

(a) Beginning in fiscal year 1990, Congress has stipulated in HHS appropriations acts and continuing resolutions that, under applicable NIH, SAMHSA, and AHRQ contracts, appropriated funds cannot be used to pay the direct salary of an individual at a rate in excess of the Federal Executive Schedule Level I.

(b) The Contracting Officer shall insert the clause in 352.231-70, Salary Rate Limitation, in NIH, SAMHSA, and AHRQ solicitations and contracts that exceed the simplified acquisition threshold when a cost-reimbursement, fixed-price level-of-effort, time-and-materials, or labor-hour contract is contemplated, including modifications of contracts of those types for projects that support extramural program activities. For purposes of this clause, for NIH: Projects that support extramural program activities are basic and applied research projects; and for SAMHSA and AHRQ: Projects that support extramural program activities are mission-related projects, exclusive of contracts for general support services.

331.102-70 Pricing of adjustments.

The Contracting Officer shall insert the clause in 352.231-71, Pricing of Adjustments, in solicitations and contracts when a fixed-price contract is contemplated.

PART 332—CONTRACT FINANCING

Subpart 332.4—Advance Payments for Non-Commercial Items

Sec.

332.402 General.

332.403 Applicability.

332.407 Interest.

332.409 Contracting Officer action.

332.409-1 Recommendation for approval.

Subpart 332.5—Progress Payments Based on Cost

332.501 General.

332.501-2 Unusual progress payments.

Subpart 332.7—Contract Funding

332.703-70 Funding contracts during a continuing resolution.

332.402

332.704 Limitation of cost or funds.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 332.4—Advance Payments for Non-Commercial Items

332.402 General.

(e) The HCA (non-delegable) shall determine whether an advance payment is in the public interest in accordance with *FAR 32.402(c)(1)(iii)(A)*.

332.403 Applicability.

All R&D contracts with educational institutions located in the United States shall provide for financing by use of advance payments, in reasonable amounts, unless otherwise prohibited by law.

332.407 Interest.

(d) The HCA (non-delegable) shall make the determinations in *FAR 32.407(d)*. The HCA may also approve interest-free advance payments for educational institutions and other non-profit organizations, whether public or private, performing work under non-profit contracts (without fee) involving health services, educational programs, or social service programs, such as the following:

(1) Community health representative services for an Indian Tribe.

(2) Narcotic addict rehabilitative services.

(3) Comprehensive health care services for Model Neighborhood programs.

(4) Planning and development of health maintenance organizations.

(5) Dissemination of information derived from educational research.

(6) Surveys or demonstrations in the field of education.

(7) Producing or distributing educational media for disabled persons including captioned films for the hearing impaired.

(8) Operation of language or area centers.

(9) Biomedical research and support services.

(10) Research surveys or demonstrations involving the training and placement of health personnel and health

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professionals, and dissemination of related information.

(11) Surveys or demonstrations in the field of social service.

332.409 Contracting Officer action.

332.409–1 Recommendation for approval.

The Contracting Officer shall transmit the information in *FAR 32.409–1* (or *FAR 32.409–2*) to the HCA by memorandum.

Subpart 332.5—Progress Payments Based on Cost

332.501 General.

332.501–2 Unusual progress payments.

(a)(3) The HCA (non-delegable) shall approve an unusual progress payment.

Subpart 332.7—Contract Funding

332.703–70 Funding contracts during a continuing resolution.

(a) *Continuing resolutions.* A continuing resolution (CR) is a legislative measure enacted to keep existing Federal programs functioning, generally at minimal levels, after the expiration of prior fiscal year budget authority and until passage of regular appropriation acts by Congress.

(b) *Operating guidance.* Because the terms of CRs may vary, for each CR, specific operating guidance will be issued by the Office of the Assistant Secretary for Financial Resources (ASFR). This guidance will—

(1) Establish the availability of funds for existing and new projects or activities (consistent with the language of the CR);

(2) Identify any specific limits or constraints imposed; and

(3) Establish the authorized level and timing of obligations permitted.

(c) Contracting activities, in concert with program, budget and finance personnel, must carefully assess contract funding decisions to—

(1) Ensure compliance with HHS guidance regarding the specific terms of a CR;

(2) Maintain essential operations and activities; and

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(3) Guard against violations of the Anti-Deficiency Act—*see FAR 32.702*.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

332.704 Limitation of cost or funds.

See subpart 342.71, “Administrative Actions for Cost Overruns,” for procedures for handling anticipated cost overruns.

PART 333—PROTESTS, DISPUTES, AND APPEALS

Subpart 333.1—Protests

Sec.

333.102 General.

333.103 Protests to the agency.

333.104 Protests to GAO.

Subpart 333.2—Disputes and Appeals

333.203 Applicability.

333.209 Suspected fraudulent claims.

333.211 Contracting Officer’s decision.

333.212 Contracting Officer’s duties upon appeal.

333.212–70 Formats.

333.213 Obligation to continue performance.

333.215–70 Contract clauses.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 333.1—Protests

333.102 General.

(g)(1) The OGC–GLD serves as the liaison for protests lodged with the Government Accountability Office (GAO); is designated as the office responsible for all protests within HHS; and serves as the notification point with GAO for all protests.

(2) Each contracting activity shall designate a protest control officer to serve as an advisor to the Contracting Officer and to monitor protests from the time of initial notification until the protest has been resolved. Contracting activities shall forward a copy of each appointment and termination of appointment of protest control officers through appropriate acquisition channels, including the HCA, to ASFR/OGAPA/DA and the Deputy Associate General Counsel, OGC–GLD.

333.103 Protests to the agency.

(f)(1) The Contracting Officer is authorized to make the determination, using the criteria in *FAR 33.104(b)*, to award a contract notwithstanding the protest after obtaining the concurrence of the contracting activity’s protest control officer and the OGC–GLD. If a protest has been lodged with the Secretary, is addressed to the Secretary, or requests referral to the Secretary, the Contracting Officer shall also obtain approval from Associate DAS for Acquisition and OGC–GLD before making the award.

(2) The Contracting Officer shall require written confirmation of any oral protest. To be considered timely, the protester must file a written confirmation in accordance with the applicable provisions in *FAR 33.102(d)(2) and (e)*. In the following cases, the Contracting Officer shall forward written protests received before award through appropriate acquisition channels, including the HCA, to OGC–GLD for processing:

(i) The protester requests referral to the Secretary of HHS.

(ii) The protest is known to have been lodged with GAO or the Secretary or is addressed to either.

(iii) The Contracting Officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the Secretary or GAO consider the protest. Otherwise, the Contracting Officer may answer protests addressed to the Contracting Officer with the concurrence of the contracting activity’s protest control officer and OGC–GLD.

The Contracting Officer shall submit files concerning these protests in duplicate, or as otherwise specified by OGC–GLD, within 5 calendar days after protest receipt; mark the files “IMMEDIATE ACTION—PROTEST BEFORE AWARD;” and include any documents relevant to issues raised in the protest.

(3) The Contracting Officer shall treat protests received after award as indicated in *FAR 33.103(f)(3)*.

333.104 Protests to GAO.

(a) *General procedures.*

(3)(ii) OGC–GLD shall process protests filed with GAO, whether pre- or post- award. The Contracting Officer